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Agenda Item 5b

December 13, 2011

TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE

I. SUBJECT: Public Hearing and Committee Recommendation: Proposed Regulations for the Terminated Agency Pool

II. PROGRAM: Retirement

III. RECOMMENDATION: Staff recommends that, subject to the results of the hearing, the Committee adopt the proposed addition to Title 2 of the California Code of Regulations to allow the Terminated Agency Pool to change its investment policy and asset allocation strategy.

IV. ANALYSIS:

At its August 16, 2011 meeting, the Board authorized staff to proceed with the addition of Article 8.1 to Title 2 of the California code of Regulations to change the investment policy and asset allocation strategy for the Terminated Agency Pool (Pool).

The purpose of the addition to Title 2 (see Attachment 1) is to provide CalPERS the ability to credit the Pool with income and interest earned on those Pool assets in accordance with any strategic investment policy and/or asset allocation strategy determined by the CalPERS Board for the Pool. This change will enable CalPERS to limit the risk of not meeting its obligation to its members participating in the TAP.

The *Notice of Proposed Regulatory Action* was published in the California Regulatory Notice Register (CRNR) 2011, No. 43-Z, October 28, 2011 (see Attachment 2). The public hearing has been noticed for December 13, 2011. The written comment period for the proposed regulatory action closed on December 12, 2011. At the time this agenda item was prepared, no written comments had been received.

The purpose of the public hearing is to allow the public to present testimony regarding the proposed regulatory action. The Committee is not required to respond to these comments during the hearing; rather, all comments must receive a response from CalPERS as part of the final rulemaking file.

At the conclusion of the public hearing, the proposed addition, this agenda item, and a summary of any public comments which have been received, will be sent to the Board for consideration. If the Board decides to adopt the proposed addition, the rulemaking file will be forwarded to the Office of Administrative Law (OAL) for review and approval. Once OAL has approved the proposed amendment, it will be forwarded to the Secretary of State for filing and publication in the California Code of Regulations. The amended regulation will become effective 30 days after filing with the Secretary of State.

V. RISKS:

The Board adopted in concept in August an investment policy and asset allocation strategy for assets of the Pool which more closely reflects the characteristics of future expected benefit payments of the Pool. The final asset allocation for the Pool is expected to be in place by June 30, 2012.

If the Board does not approve the proposed regulations, the risk is that CalPERS will lack clear regulatory authority to credit the Pool with investment income in accordance with the way the assets will be invested which could expose the system to a legal challenge. If a legal challenge is successful, it could invalidate the Board's efforts to increase the security of members' benefits in this area.

If the Board does approve the proposed regulations, CalPERS will be able to properly allocate the investment income to the Pool. However, this could lead to the crediting higher or lower investment returns to the Pool compared to the other employers participating in the PERF and could increase the risk of negative perception by the public toward CalPERS.

VI. STRATEGIC PLAN:

This item supports Strategic Plan Goal I, to exercise global leadership to ensure the sustainability of CalPERS' pension and health benefit systems.

VII. RESULTS/COSTS:

The costs are expected to be part of the regular and ongoing workload of the Actuarial Office. There will be additional investment related expenses but these cannot be quantified until the detailed investment policy is determined.

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Attachments